**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928**

**WP(C).No. 14621 of 2006(N)**
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**OS.589/2002 of M.C.KOZHIKODE-I**
**.....**

**PETITIONER:**
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**DOLLY GEORGE, W/O. GEORGE,**
**AGED 37 YEARS, CHEVAYOOR AMSOM AND DESOM,**
**KOZHIKODE TALUK.**

**BY ADV. SRI.C.P.MOHAMMED NIAS**

**RESPONDENTS:**
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**AL-AMEEN PUBLIC LTD.COMPANY,**
**REPRESENTED BY ITS DIRECTOR AND PRINCIPAL OFFICER**
**P.M. PADMANABHAN, S/O. KRISHNA MENON,**
**AGED 78 YEARS, REGD.OFFICE AT KILIPPARAMBA LANE,**
**NGARAM AMSOM AND DESOM, KOZHIKODE TALUK.**

**BY ADV. SRI.V.V.SURENDRAN**
**SMT.SANIKA.V.S.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

EXT. P1 TRUE COPY OF THE PLAINT DATED 3/9/02 IN O.S.589/02 ON THE FILE OF THE MUNSIFF COURT, KOZHIKODE I (P).

EXT.P2 TRUE COPY OF WRITTEN STATEMENT DATED 19/12/02 FILED ON BEHALF OF THE PETITIONER.

EXT.P3 TRUE COPY OF REPORT AND PLAN DATED 20/1/04 FILED BY THE ADVOCATE COMMISSIONER.

EXT.P4 TRUE COPY OF AFFIDAVIT FILED IN SUPPORT OF I.A.3868/03 DATED 28/8/03

EXT.P5 TRUE COPY ORDER DATED 17/2/06 IN I.A.3867/03 AND I.A.3868/03 MUNSIFF COURT I (P), KOZHIKODE DATED 12/8/04.

[ True copy ]

P.A. to Judge.

**M.N. KRISHNAN, J.**

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**W.P.C. NO. 14621 OF 2006**

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**Dated this the 2nd day of February, 2007.**

**J U D G M E N T**

This writ petition is filed challenging the order passed in I.A.3867/03 and I.A.3868/03 in O.S.589/02. Said petitions are filed for amendment of the plaint by the plaintiff and it was strongly resisted by the 5th defendant . The trial court ultimately allowed it. It is against that decision the present writ petition is filed.

2. Heard both sides. The learned counsel for the writ petitioner would submit before me that the amendment sought to be introduced will change the character of the suit and by that they want to take away a vital admission which has been made in favour of the 5th defendant in the case. The learned counsel for the plaintiff had argued the case with the plan on record. It is submitted by him, to start with the portion which is sought to be amended was lying as a way and the plaintiff has so stated in the plaint and according to him it was by virtue of an easement by grant. Subsequently, he had taken assignment of that property and therefore has become the absolute owner of the property and

therefore the question of easement by any means known to law cannot be claimed by him for the reason that he has become the owner of the property.

3. On the other hand, the 5th defendant would contend that it was also a part of the way which he was using to have ingress and egress to the property and therefore amendment should not be allowed. As rightly contended by the learned counsel for the plaintiff when it is claimed that he has become the owner of the property by virtue of an assignment deed there cannot be any pleadings with respect of that property by virtue of any easement and therefore the plaint has to be amended as there is change of circumstances. The question whether by virtue of an assignment deed the plaintiff has got title to that property or by virtue of that assignment whether the right that has accrued to the 5th defendant will be taken away etc. are matters that has to be established by evidence. The trial court has also permitted the 5th defendant to file additional written statement raising the contentions regarding the alleged amendment so that his interest is also properly protected.

4. Therefore, the order of the trial court allowing the amendment does not suffer from any infirmity and therefore the writ petition lacks merit and it is dismissed. However, it is made clear that whether 5th defendant has got any right over the property which is claimed by him etc. are matters to be decided in the suit and counter claim and the parties are at liberty to raise the same for an effective decision.

**M.N. KRISHNAN, JUDGE.**

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